IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUMMONS FOR JUDGMENT NO.35 OF 2007
IN
SUMMARY SUIT NO.3469 OF 2006

Paresh Laxmichand Shah. ...Plaintiff.
Vs.
Hitesh Shah. ...Defendant.

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Mr.Pratap Kapadia for the Plaintiff.
Mr.I. B. Singh for the Defendant.

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CORAM : DR.D.Y.CHANDRACHUD, J.
20th March 2007.

P.C.:

The Summary Suit under Order 37 of the Code of Civil Procedure, 1908, has been instituted for the recovery of an amount of Rs.7,90,154/-, being the balance due on account of goods sold, supplied and delivered under diverse invoices issued between 14th August 2005 and 25th March 2006. Out of the total amount of the invoices, which works out to Rs.13,47,459/-, part payment of Rs.5,57,305/- has been made, leaving a balance due and outstanding as claimed in the suit. Copies of the invoices are annexed at Exh.A1 to A16. At Exh.B to the Plaint is a copy of the Central Sales Tax Form-C, duly signed by the Defendant. The original of the document has been produced in Court. The

document which has been executed by the Defendant on 23rd August 2006 contains a confirmation of liability in the amount of Rs.7,98,694/-.

Leave under clause 12 of the Letters Patent has been granted. In the course of the hearing of the Summons for Judgment, Counsel appearing on behalf of the Defendant fairly stated that there was no occasion for the Defendant to deny either the authenticity or correctness of the contents of Form-C that has been executed by the Defendant. However, it has been urged that the case of the Defendant is that all the goods which have been received have been duly paid for. The defence that the goods have been duly paid for does not appear in the reply filed to the Summons for Judgment. On the contrary, in para 4(iv), the defence is that the Defendant had never admitted supply of the goods as alleged by the Plaintiff. There is absolutely no valid or tenable defence to the suit. On the contrary, the Defendant does not deny that on 23rd August 2006 he has acknowledged the outstanding liability of Rs.7,98,694.06 while executing Form-C under the Central Sales Tax Act. In these circumstances, the Summons for Judgment shall have to be made absolute and the

suit will have to be decreed. There shall be a decree as prayed in terms of prayer clause (a) subject to the modification that the Plaintiff will be entitled to interest at the rate of 9% p.a. from the date of the suit until payment by the Defendant.

Refund of Court fee, if any, as per rules.

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